

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

RPM PIZZA, LLC,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 15-60909
)	
NATIONAL LABOR RELATIONS BOARD,)	
)	
<u>Respondent.</u>)	

PETITIONER’S MOTION FOR SUMMARY DISPOSITION

Petitioner RPM Pizza, LLC (“RPM”) hereby moves the Court for summary disposition of its Petition for Review. The grounds for this Motion are as follows:

1. On December 22, 2015, the Board issued the underlying order in this case finding that RPM violated Section 8(a)(1) of the National Labor Relations Act (“NLRA”) by maintaining, threatening to enforce, and enforcing an arbitration agreement that requires employees to waive their right to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial. *See RPM Pizza, LLC*, 363 N.L.R.B. No. 82 (2015).

2. RPM filed a petition for review of the Board’s order on December 29, 2015.

3. The Board’s order is premised on its decisions in *D.R. Horton*, 357 N.L.R.B. 2277 (2012), and *Murphy Oil USA, Inc.*, 361 N.L.R.B. No. 72 (2014).

4. This Court denied enforcement of the Board’s *D.R Horton* and

Murphy Oil decisions in pertinent part, and subsequently denied the Board's petitions for rehearing *en banc*. See *D.R. Horton v. NLRB*, 737 F.3d 344 (5th Cir. 2013), *pet. for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014); *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015), *pet. for reh'g en banc denied*, 5th Cir. No. 14-60800 (May 13, 2016).

5. On February 9, 2016, the Board filed an unopposed motion to hold this case in abeyance pending final resolution of *Murphy Oil*. In the abeyance motion, the Board observed that the underlying order on review presents identical issues to those presented in *Murphy Oil*.¹ On February 12, 2016, the Court granted the Board's unopposed abeyance motion.

6. At the time the abeyance motion was granted, the Court had not yet ruled on the Board's petition for rehearing *en banc* in *Murphy Oil*. However, on May 13, 2016, the Court denied the Board's petition in that case.

7. On July 6, 2016, RPM filed an opposed motion to terminate the abeyance order because, not only did the Court in *D.R. Horton* and *Murphy Oil* finally decide the precise issue presented here, the Court has since decided the same issue in *Chesapeake Energy Corp. v. NLRB*, 633 F. Appx. 613 (5th Cir. 2016) (*per curiam*), and *PJ Cheese, Inc. v. NLRB*, No. 15-60610, 2016 WL

¹ One issue in *Murphy Oil* that is not at issue here is whether the arbitration agreement includes language that employees reasonably would believe prohibits them from filing unfair labor practice charges with the Board. No similar allegation or finding was made with respect to RPM's arbitration agreement.

3457261 (5th Cir. June 16, 2016) (per curiam) (granting employer's motion for summary disposition).

8. On July 11, 2016, the Court granted RPM's opposed motion to terminate the abeyance order. The matter is now ripe for summary disposition.

9. Summary disposition, without the need for full briefing on the merits or oral argument, is appropriate where, *inter alia*, "one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

10. Summary disposition is appropriate here because this Court has clearly and unequivocally held that class and collective action waivers in employment arbitration agreements do not violate the NLRA. *See D.R. Horton v. NLRB*, 737 F.3d 344 (5th Cir. 2013), *pet. for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014); *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015), *pet. for reh'g en banc denied*, 5th Cir. No. 14-60800 (May 13, 2016); *Chesapeake Energy Corp. v. NLRB*, 633 F. Appx. 613 (5th Cir. 2016) (per curiam); *PJ Cheese, Inc. v. NLRB*, No. 15-60610, 2016 WL 3457261 (5th Cir. June 16, 2016).²

² *PJ Cheese* is particularly instructive here because in that case, the Court terminated the abeyance order and granted the employer's motion for summary disposition, precisely as RPM requests here.

11. Because RPM is “clearly right as a matter of law” on the issues presented in light of the above-cited cases, briefing this case on the merits would waste judicial resources. The case is therefore appropriate for summary disposition.

12. RPM, though the undersigned counsel, has contacted the NLRB’s counsel to ascertain the NLRB’s position on this motion. The NLRB’s counsel has indicated that the NLRB opposes the motion.

For the foregoing reasons, the Court should grant RPM’s Motion for Summary Disposition.

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COUNSEL FOR PETITIONER

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CERTIFICATE OF SERVICE

I certify that on July 14, 2016, I filed Petitioner’s Motion for Summary Disposition with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, and that all counsel are registered CM/ECF users.

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Dated at Columbia, SC
this 14th day of July, 2016